

Stop Prisoner Rape (SPR) is a national nonprofit human rights organization that works to end sexual violence against men, women, and youth in all forms of detention.



Prison Rape Elimination Act Update

March 2007

“Members of the public and government officials are largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.”

Congressional Findings, Prison Rape Elimination Act of 2003, 42 U.S.C. §15601

Table of Contents

- I. Introduction
- II. Provisions of the Prison Rape Elimination Act (PREA)
 - A. Annual Comprehensive Statistical Review by the Bureau of Justice Statistics (BJS)
 - B. Review Panel on Prison Rape
 - C. Annual Reporting by the Attorney General
 - D. Technical Assistance for Preventing and Prosecuting Prison Rape
 - E. Grants to Protect Inmates and Safeguard Communities
 - F. Comprehensive Study and Issuance of Standards by National Prison Rape Elimination Commission
 - G. Contracts for Research
- III. Appropriations

Note: In the electronic version of this PREA Update, posted on www.spr.org, readers can click on links to the relevant statutory provisions and related reports.

I. Introduction

The Prison Rape Elimination Act (PREA), passed by a unanimous Congress in 2003, is the first-ever federal legislation to address rape and sexual abuse behind bars in the United States. PREA applies to all detention facilities, including federal, state, and local jails, prisons, police lock-ups, private facilities, and immigration detention centers. It mandates that these systems establish a zero-tolerance standard for sexual assaults of any kind. Among other things, PREA requires:

- The collection of national data on the incidence of prisoner rape;
- An examination of the nation's best and worst performing detention facilities;
- A comprehensive study of prisoner rape;
- The development of national standards on how to address sexual violence behind bars.

As described below, PREA's mandate is carried out by the U.S. Attorney General and various agencies within the U.S. Department of Justice (DOJ). For more information about PREA, including the Congressional findings that underlie the law, see 42 U.S.C. §§15601-15602. The law is available on SPR's website at <http://www.spr.org/pdf/PREA.pdf>. For more information on the agencies and initiatives mentioned in this PREA Update, see <http://www.ojp.usdoj.gov/topics/prisonrapeeliminationact.htm>.

II. Provisions of the Prison Rape Elimination Act (PREA)

Note: The provisions of PREA are addressed in the order in which they appear in the legislation.

A. Annual Comprehensive Statistical Review by the Bureau of Justice Statistics (BJS)

42 U.S.C. §15603(a)

“The [BJS] shall carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape....”

The Bureau of Justice Statistics (BJS) is charged with measuring the prevalence of sexual violence in detention. For 2004 and 2005, BJS reviewed administrative records to estimate the incidence of sexual violence reported to corrections authorities. The 2004 study concluded that there were 5,386 reported incidents in adult facilities nationwide and 2,821 reports of abuse made by youth to juvenile facility staff.¹ In 2005, the number of estimated adult reports rose to 6,241.² As of the writing of this PREA Update, BJS had not yet released the figure for juvenile facilities in 2005.

To supplement the limited data available from reported incidents, BJS will be conducting annual surveys directly with adult inmates, juvenile detainees, and parolees. During 2006, BJS completed the pre-test of its adult inmate survey. The preliminary results show that more than four percent of inmates surveyed reported experiencing non-consensual sexual contact in the previous 12 months alone.

In 2007, the first adult inmate survey will be administered at ten percent of all U.S. detention facilities, including at least one prison and one jail in every state. The agency will

undertake a separate survey in juvenile facilities, and another of former prisoners, also beginning in 2007. Immigration facilities will not be included in this first round of surveys, but BJS is considering adding them in the future. BJS will publish the results of these surveys in a yearly report that includes a ranking of surveyed institutions according to their incidence of prisoner rape and identifies any institution that did not cooperate with the surveyors.

Stop Prisoner Rape (SPR) has played a significant role in the PREA-related work of BJS. SPR reviewed and commented publicly on the studies of reported incidents in 2004 and 2005. SPR also provided input on the inmate survey's content and administration, ensuring that it addresses the concerns of inmates and not just corrections officials. In the fall of 2006, SPR staff taped a training video to sensitize BJS interviewers to the needs and concerns of prisoner rape survivors. To ensure that survey participants have access to mental health resources, SPR has also produced state-specific flyers with information about SPR and local rape crisis centers that have agreed to assist inmates. When the survey is launched later this year, SPR will monitor its administration.

For more information, see <http://www.ojp.usdoj.gov/bjs/abstract/svrca05.htm> and <http://www.ojp.usdoj.gov/bjs/abstract/svrca04.htm>.

SPR's press releases discussing the BJS statistical reports are available at http://www.spr.org/en/pressreleases/2005/08_01_05.asp and http://www.spr.org/en/pressreleases/2006/07_30_06.asp.

B. Review Panel on Prison Rape

42 U.S.C. §15603(b)

“To assist the Bureau [of Justice Statistics] in carrying out [its] review and analysis . . . , there is established, within the Department of Justice, the Review Panel on Prison Rape”

The Department of Justice’s Review Panel on Prison Rape is charged with holding annual hearings that focus on the three facilities with the highest incidence of prisoner rape and the two facilities with the lowest incidence, as determined by the abovementioned BJS surveys. These hearings will seek to identify common characteristics among prisons and prison systems with a high incidence of prisoner rape and among those that have been successful in deterring this type of violence.

The Review Panel consists of three members appointed by the Attorney General: Steve McFarland, Director of the Department of Justice’s Task Force for Faith-Based and Community Initiatives; Carroll Ann Ellis, Director of the Fairfax County (Virginia) Police Department Victim Services Division; and Sheriff Ted Sexton of the Tuscaloosa County (Alabama) Sheriff’s Office.

The Review Panel held its first hearing in November 2006, at Folsom State Prison in California. Because BJS has not yet administered its inmate survey, this hearing was not based upon any institutional ranking or finding about the incidence of rape. It focused instead on the sexual abuse of inmates in California corrections facilities in general, with the aim of identifying factors that deter sexual assaults, likely barriers to the reporting and investigation of prisoner rape, and useful methods for assessing the role of corrections officer unions in deterring prisoner rape.

SPR has provided the Review Panel with substantial background information. SPR staff testified at the Panel’s first hearing,

highlighting the legitimate fears among prisoners of reporting sexual violence and the inappropriate assumptions among many corrections officials that inmates who report abuse are lying. SPR also facilitated the testimony of a prisoner rape survivor at the hearing, who discussed the particular vulnerabilities of gay and transgender inmates, and the difficulties he encountered in seeking assistance from officials after being raped at a California state prison in late 2004.

For more information, see <http://www.ojp.gov/reviewpanel/index.htm>.

C. Annual Reporting by the Attorney General

42 U.S.C. §15603(c)

“[T]he Attorney General shall submit a report of the activities of [BJS] and the Review Panel, with respect to prison rape, for the preceding calendar year”

The Attorney General must submit an annual report to Congress and the Secretary of Health and Human Services that summarizes the data and evidence collected by BJS and the Review Panel. These reports will include a listing of those institutions in the BJS survey that appear to have been successful in deterring prisoner rape, as well as those that did not cooperate with the survey. This data will be adjusted to account for differences between facilities, such as security level, size, and jurisdiction, so that valid comparisons can be made.

The Attorney General is expected to issue its first report in 2008, after the release of the results of the first annual inmate survey and the Review Panel hearings that will follow. SPR will review the Attorney General’s report and provide analysis and public commentary.

D. Technical Assistance for Preventing and Prosecuting Prison Rape

42 U.S.C. §15604(a)

“There is established within the National Institute of Corrections a national clearinghouse for the provision of information and assistance [and] [t]he [NIC] shall conduct periodic training and education programs for Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.”

The National Institute of Corrections (NIC) is responsible for providing information, technical assistance, and educational programs to corrections authorities on the prevention, investigation, and punishment of prisoner rape. To carry out this mandate, NIC has contracted with the Moss Group, a private consulting firm, and National Prison Rape Elimination Commissioner Brenda Smith, a professor at American University’s Washington College of Law. With these partners, NIC has developed educational videos for inmates and officers, and provided training for corrections officials throughout the country.

NIC is also required to issue an annual report summarizing its own PREA-related activities, as well as those of BJS, the Bureau of Justice Assistance and the National Institute of Justice. Thus far, NIC has issued two such reports—the first summarizing the work of these agencies from October 2003 through September 2004, and the second covering the remainder of 2004. A report on the activities of 2005 has not yet been issued.

SPR was among the stakeholders that provided input to the Moss Group on its orientation videos for male and female inmates. SPR has also participated in training broadcasts for corrections officials and others involved in implementing PREA. Finally, SPR staff have provided presentations on the impact of prisoner rape at the Moss Group’s statewide workshops for corrections officials.

For more information, see <http://community.nicic.org/blogs/prea/default.aspx>.

E. Grants to Protect Inmates and Safeguard Communities

42 U.S.C. §15605(a)

“[T]he Attorney General shall make grants to States to assist those States in ensuring that budgetary circumstances...do not compromise efforts to protect inmates (particularly from prison rape)....”

The Attorney General, through the Bureau of Justice Assistance (BJA), is charged with awarding two-year grants to assist states in their PREA implementation efforts. These grants can be used for personnel, training, technical assistance, data collection, and equipment to prevent, investigate, and prosecute prisoner rape.³ Each grantee state is required to submit a report, within 90 days of the end of the grant period, detailing the activities carried out under the grant, as well as the effect of the grant on the incidence of and official response to prisoner rape within the state.

Congress appropriated \$25 million to this program in 2004, and \$20 million in 2005. Thus far, BJA has provided 44 grants, in amounts of up to \$1 million, to 43 states. Most recently, states were allowed to apply for 2007 funding to evaluate the effectiveness of their current programs and for technologies aimed at preventing rape in corrections facilities. The agency expects to award a number of two-year grants in amounts of up to \$1 million each, with priority given to states seeking \$250,000 or less, due to budgetary considerations.

SPR has collaborated with or provided technical assistance to several grantee states. For example, SPR staff provided training to senior corrections officials in Pennsylvania and Oregon in 2006. SPR will continue to assist states and monitor the appropriations process to ensure that funding remains available for state-level PREA implementation efforts.

For more information, see http://www.ojp.usdoj.gov/BJA/grant/Protecting_Inmates.html.

F. Comprehensive Study and Issuance of Standards by National Prison Rape Elimination Commission

42 U.S.C. §§ 15606, 15607

“The Commission shall carry out a comprehensive legal and factual study of the penological, physical, mental, medical, social, and economic impacts of prison rape in the United States [and] shall provide...recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.”

The National Prison Rape Elimination Commission (the Commission) is a bipartisan federal commission with eight members (and one vacancy) who were appointed by the President and congressional leaders in 2004. In 2005 and 2006, the Commission held six public hearings around the country aimed at informing its study of the impact of prisoner rape. Each hearing focused on obtaining expert testimony on specific issues, such as: sexual abuse of juveniles and other vulnerable populations; prosecution and evidence collection; the corrections perspective; immigration facilities; and labor relations.

The next hearing is scheduled for March 26-27, 2007 in Austin, Texas, and will focus on police lock-ups and Native American facilities. The hearing will also address widespread abuse of youth by staff members in Texas juvenile facilities,⁴ and recent programmatic efforts in that state to respond to the sexual abuse of inmates generally. The Commission intends to hold one additional public hearing in 2007.

In addition to completing its comprehensive study, the Commission is mandated to develop national standards addressing prisoner rape. Using evidence from the hearings and other input, the Commission staff are developing recommended standards and a comprehensive report. The standards will focus on six topics: classification and technology; training; mental and medical health; investigation and staff misconduct; evidence protocols; and confidential reporting and data.

To assist in drafting the standards, the Commission has created expert committees covering each of the six topic areas with two additional committees focusing on youth and immigration detainees, respectively. The committees are scheduled to meet in the spring and fall of 2007, and the standards are due to be completed in late 2007 or early 2008.

Following a one-year public comment period, the U.S. Attorney General will publish a final rule adopting the national standards, as revised during the public comment period. The standards will then be transmitted to the head of each state's Department of Corrections and to local government officials who oversee corrections facilities. States receiving federal funding for prison purposes risk losing five percent of those funds should they fail to adopt and comply with the standards, and will also be identified in an annual report published by the Attorney General.

SPR has played a key role at the Commission's public hearings. SPR staff have testified at several hearings and provided expert advice to the Commission staff in developing the hearing agendas. SPR also has enabled 16 survivors and three relatives of survivors to testify at the hearings, and provided compilations of accounts from incarcerated survivors who could not appear before the Commission. Finally, SPR has worked with the Commission to use the hearings as a means to raise public awareness about the problem of sexual abuse in detention.

SPR is also involved in the Commission's development of national standards. SPR staff, board members, and survivor advocates are participating in seven of the eight expert committees. In addition, in February 2007, SPR gathered survivors of prisoner rape from around the country to develop recommendations for the Commission. The Commission issued a statement expressing its support for the SPR Survivor Summit, highlighting its readiness to receive recommendations from the participating survivors.⁵

For more information, see <http://www.nprec.us>.

G. Contracts for Research

42 U.S.C. § 15606(j)

“The National Institute of Justice shall contract with the researchers and experts selected by the Commission to provide funding in exchange for their services.”

The National Institute of Justice (NIJ) has provided several million dollars for PREA-related research to a variety of experts. In 2006, several NIJ-funded reports examining sexual violence were published. Other NIJ-funded research will look at the medical and psychological impact of sexual violence on inmates, and at programs or technologies aimed at preventing sexual violence in detention.

“Sexual Violence in Texas Prisons,” was released in March 2006 by the JFA Institute.⁶ The report assessed 2,000 official complaints of sexual violence made in Texas prisons between 2002 and 2005. The second largest prison system in the nation, Texas has the highest rate of alleged incidents of sexual assault in detention—3.95 per 1,000 inmates—but the lowest rate of substantiated incidents. Nonetheless, the report concludes that there are lessons to be learned from the state’s response to this epidemic. The centerpiece of this response has been the Safe Prisons Program, which includes inmate peer education about sexual abuse and a central database in which detailed information regarding every report of sexual violence in a corrections facility is logged. The number of reported incidents of sexual abuse has continued to climb since the program was implemented several years ago, but the report infers that this may be a sign that the state’s initiatives to combat sexual abuse have raised awareness of the problem and made victims more likely to report.

“Addressing Sexual Violence in Prisons: A National Snapshot of Approaches and Highlights of Innovative Strategies” was released in October 2006 by the Urban Institute.⁷ It is the first large-scale overview of what states are doing to implement PREA and how efforts that were initiated before the passage of

the law have been expanded due to the increased visibility of prisoner rape. Strategies highlighted in the report include utilizing sexual assault service providers from the community as part of sexual assault response teams and having independent, external agencies investigate reports of staff-on-inmate abuse. The report makes clear that a great deal of work remains to be done at the state level to put in place systems for preventing and responding to sexual violence. For example, many state corrections systems still do not have specific and comprehensive written policies on prison sexual violence.

Professor Mark Fleisher of Case Western University received a grant of nearly \$1 million for a report entitled “The Culture of Prison Sexual Violence.” The report was released by Professor Fleisher prematurely, prior to being peer reviewed and finalized, in January 2006. This initial version reached the conclusion that prisoner rape is “rare,” although it contained no research substantiating this claim.⁸ Commission Chairperson Reggie Walton criticized the preliminary report’s conclusion as “asinine,”⁹ and NIJ took the unusual step of withholding the last portion of the grant pending an acceptable final report. A substantially revised final version was released in November 2006, still plagued by many of the same fundamental flaws as the initial draft. It carelessly blurs the distinctions between rape, coerced sex, and consensual sex behind bars to suggest that most sexual activity in prison, even between inmates and officials, is “consensual.” Most disturbingly, the report fails to recognize that rape is an act of violence, not sexual expression, by constructing a so-called “prison sex worldview” in which forced sex is perceived as conduct that enables inmates to “come to terms with their inner homosexual.”¹⁰ Despite these serious flaws, the 333-page study contains some useful recommendations for combating sexual violence behind bars, such as developing institutional practices that do not punish reporting rape and responding appropriately to homophobic attitudes and conduct by corrections staff.¹¹

SPR published a detailed analysis of Fleisher’s

initial study in which it demanded that he and his team be held accountable for their problematic research.¹² In a press release and in extensive discussions with government officials and reporters, SPR highlighted the flaws in the initial draft and in the final report.

For more information, see <http://www.ncjrs.gov/pdffiles1/nij/213137.pdf>. The reports mentioned above can be found at <http://www.ncjrs.gov/pdffiles1/nij/grants/215774.pdf>; http://www.urban.org/UploadedPDF/411367_psv_programs.pdf; and <http://www.ncjrs.gov/pdffiles1/nij/grants/216515.pdf>. SPR's report criticizing Fleisher's study is available at <http://www.spr.org/pdf/preaupdate0206.pdf>.

III. Appropriations

To implement its mandate, PREA authorizes annual appropriations of more than \$60 million per year for the years 2004 through 2010. Thirteen million dollars were appropriated for the initial implementation of the law following its passage in September 2003. Unfortunately, actual appropriated funds have decreased substantially since then, from nearly \$40 million in fiscal years (FY) 2004 and 2005, to \$18 million in FY 2006.

The Bush Administration requested a mere \$2 million for PREA implementation in FY 2007. While the Senate Appropriations Committee supported the Administration's request, the House Appropriations Committee expressed its "disappoint[ment] that the Administration's request significantly reduces funding for the program and fears that this action demonstrates a lack of commitment to fully implement the [law]."¹³ The House Appropriations Committee recommended that \$23 million be appropriated for PREA in FY 2007. However, the appropriations bill that would have provided this funding was not enacted before the end of the 109th Congress. Rather, President Bush signed into law on February 15, 2007, a resolution that allows

for the continued funding of government programs for the remainder of the fiscal year. While exact information regarding the amount of funding each agency will receive for FY 2007 was not available at the time this PREA Update was published, it was expected that funding for PREA activities would remain at the 2006 level.

Looking toward FY 2008, the Administration's proposed budget includes PREA within a bundle of state and local law enforcement initiatives totaling \$542 million. If this budget is approved, PREA initiatives will have to compete with a long list of other law enforcement priorities. It is thus unclear how much of that funding, if any, would go directly to PREA-related mandates.

SPR is seriously concerned about the lack of commitment to fully fund PREA during these critical early years of its implementation. The failure to provide such funds will jeopardize PREA's primary purpose of mandating a zero-tolerance standard for sexual violence in U.S. detention facilities. SPR urges members of Congress and the Administration to ensure that adequate funds are made available to carry out the full mandate of PREA.

Endnotes

1. ALLEN J. BECK & TIMOTHY A. HUGHES, BUREAU OF JUSTICE STATISTICS, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES 2004 1 (2005).
2. ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES 2005 1 (2006).
3. State and local governments may also obtain grants for certain efforts seeking to reduce prison population growth without compromising public safety, to better understand the risks of releasing inmates into the community, and to prepare maps demonstrating the concentration of released inmates.
4. The Texas Youth Commission has been shrouded in controversy since February 2007, when widespread complaints of sexual abuse of youth by staff at Texas Youth Commission (TYC) facilities came to light. The TYC has since been accused of covering up repeated incidents of sexual assault during the past several years. In total, TYC inmates lodged more than 750 complaints of sexual abuse (by staff and other inmates) since January 2000. The executive director of the TYC resigned on February 23, 2007, and Texas governor Rick Perry has appointed a special magistrate to investigate the scandal. See e.g. R.G. Ratcliffe, *TYC Abuse Cases Sat Collecting Dust, Lawmaker Says*, HOUSTON CHRONICLE, March 13, 2007; Ralph Blumenthal, *One Account of Abuse & Fear in Texas Youth Detention*, NEW YORK TIMES, March 8, 2007; Mike Ward, *Law Officers Descend Upon Youth Commission Facilities, TYC Officials Say Senators Aware of Abuse Investigation Two Years Ago*, AUSTIN-AMERICAN STATESMAN, March 7, 2007; Doug Swanson, *Texas Sex Allegations Exceed 750*, DALLAS MORNING NEWS, March 6, 2007.
5. Press Release, National Prison Rape Elimination Commission, Bi-Partisan Commission Applauds First-Ever Prison Rape Survivor Summit (Feb. 15, 2007) (available at http://www.spr.org/pdf/PressStatementSPRSummit3%20_2_.pdf).
6. JFA INSTITUTE, SEXUAL VIOLENCE IN TEXAS PRISONS (March 2006).
7. JANINE M. ZWEIG, *et al.*, URBAN INSTITUTE, ADDRESSING SEXUAL VIOLENCE IN PRISONS: A NATIONAL SNAPSHOT OF APPROACHES AND HIGHLIGHTS OF INNOVATIVE STRATEGIES (October 2006).
8. Mark S. Fleisher, *The Culture of Prison Sexuality and Rape 7* (Jan. 2006) (unpublished manuscript, on file with Stop Prisoner Rape).
9. Kim Curtis, *Disputed Study: Rape Rare in Prisons*, Associated Press, Jan. 17, 2006.
10. MARK S. FLEISHER & JESSIE L. KRIENERT, *THE CULTURE OF PRISON SEXUAL VIOLENCE* 151-53 (2006).
11. *Id.* at 265-66.
12. STOP PRISONER RAPE, SPECIAL REPORT ON NIJ RESEARCH TRAVESTY (2006) (available at <http://www.spr.org/pdf/preaupdate0206.pdf>).
13. H.R. Rep. No. 109-520, at 43-44 (2006).



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